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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,476	07/01/2002	Jorg Peter Schur	von Kreislcr.021	3376
110	7590	07/05/2005	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 07/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,476

Applicant(s)

SCHUR, JORG PETER

Examiner

NEIL LEVY

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-15, 17 and 23-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Amendment to the specification is incorrect – WO 96/29859 has nothing to do with this invention. Please correct or explain.

Claims 1-15, 17, 23-26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection of record is maintained. Table's applicant directs us to show minor antimicrobial effects (10,000 molds/g, control compared to 1,000) when treatment disclosed is not to post harvest tobacco, wheat or any other plant fruit or portion-it is to the whole plant culture (p.26). The larvae have nothing to do with the claimed method.

Applicants claims are to seen as treating harvested tobacco; the examples and specification, do not present this. The claimed methods should be presented with sufficient description for one in the art to know what steps is performed, on what tobacco surfaces, when, and how protection is determined to have been accomplished.

^{15,17,23-26 are}
Claims ~~1-15, 17, 23-26~~ rejected under 35 U.S.C. 103(a) as being unpatentable over Schur WO 96/29895 in view of Mc Cradle 5747416, Beilfuss et al CA 2012288 Bessette et al WO 98/54971, and Stevenson 5091405 and further in view of Erslev - 1331331.

Schur, p. 3, shows in general, foods and other products, perishable, are kept fresh with bacteria static and fungi static. active, but Schur shows 2 or more flavoring

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agents are effective (p.5) and safe (p.6), when applied to surfaces, of plant or inanimate materials (p. 7) at 0.01-5g/kg. Agents include phenols, (p.9, p.10) propylene glycol (p. 9, I), benzyl alcohol, phenylethyl alcohol, propylene glycol, m=but alcohol and isobutyl alcohol (p.7).

Acids (p. 11, V), and tannic acid; equivalent to tannin (p. 8, 44), and/or, equivalently lactic acid. Less than 50% Benzyl alcohol can be utilized with only 1 other of the compounds, or more if desired, to attain a microbiocidal effect (p. 13).

Rapeseed oil is not discussed.

Mc Cardle shows sprayable compositions for plant treatment inclusive of antimicrobial agents, with adjuvants (col. 3, lines 5-28). Acidulates are shown to be equivalently tannic or lactic acid (col. 7, lines 8-11); mixtures are also taught. Solvent systems include water and propylene glycol (col. 7, line 28-33).

Beil fuss shows aqueous sprayable compositions for plant treatment inclusive of antimicrobial agents, with adjuvants (p.4). Phenolics are 1-80%, no polyphenols are seen. An alcohol is equivalently or mixes, of phenylethanol or benzyl alcohol. Antimicrobial efficacy is disclosed (p. 11, p. 12).

Bessette (p. 15) also shows mixes of phenol compounds with phenyl and phenylethyl alcohols (3c) applicable to plants in aqueous or vegetable oil solvents (p. 19).

Stevenson shows crop oils as equivalently castor oil, Rapeseed oil, soybean oil (col. 54) when applied to crops in compositions with other microbial, diluents as sprays (col. 58).

Although Tobacco is not specified in these references, they show protection against fungus and bacterial, by application to plant or plant products, utilizing safe, natural, and essential oil derivatives alone and in combination. ~~Ersle~~ exemplifies post harvest treatment specifically of Tobacco. One of the equivalent natural compounds of the cited prior art is elastic acid (col. 1, line 50-61) applied as spray to dried, post harved, tobacco leaf surfaces (p. 1, lines 105 – P. 2, line 5).

The primary references disclose the essence of the instant invention as claimed, but do not specify each and every concentration or element of the instantly claimed compositions. However, the secondary reference solves the problem of the primary reference, providing the equivalent and use components in compositions applied to plants or plant parts as protective compositions. Schur provide the instant components, show they can be used as single or multiple ingredients; show the equivalence of these components and show concentrations as instantly, claimed, exemplifying benzyl alcohol as a favored, but not required, component; directed to treating after harvest to reduce microbes. Mcardle, Beilfuss and Bessette also show use of limited mixes of the instant components, also for treating plants, and at instant concentration thus with attendant instant antimicrobial effects. Thus any of these combinations would also be of use in treating ~~Ersle~~'s tobacco leaves.

Thus, the artisan would find obvious to prepare particular ingredient combinations, depending upon the factors typically used in the art, inclusive of ingredient compatibility, flavor, stability, handling, and cost considerations, besides

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those of desired number of applications, length of time for desired protection, ease of handling, target species, degradation, for example.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that the administration of the particular form of active, carrier, of the time to be treated provides any greater level of prior art expectation as claimed. Further, no criticality as to the particular compound or mixes there of has been shown by applicant. Rapeseed oil and castor oil are shown as equivalent, by Stevenson thus either would serve, in the Bessette example for instance tannin and tannic acid are shown by Schur, WO, as equivalent; thus either, or both, in the Schur patents, would serve as obvious components, or would replace the tannic acid or lactic acid of Mc Cardle. Beilfuss shows neither tannic acid or tannin is required in phenol antimicrobial mixes, thus the combination of alcohols of Schur would also be an obvious compositional approach to provide antimicrobial efficacy. None of these ingredients as equivalents or combinations has been shown to interfere with their utilization in these prior art compositions to provide protection when sprayed on crop or plant parts, thus the instant essentiality is not seen as adversely altering the compositions or then use.

The selection of each ingredient and amount thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

It would have been obvious to one with ordinary skill in the art at the time of the instant invention, to arrive at a composition of the instant components since all the

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teachings referenced show their use. The specific weights, and additives are result effective parameters subject to control by one with skill in the art.

Applicant's arguments filed on 4/06/05 have been fully considered but they are not persuasive. Applicants agreements are directed to the 5 components shown effective; when wheat or tobacco plants are treated. However, individual treatments, or mixes of less than 5 components were not at all disclosed as effective post harvest antimicrobials. The prior art shows the equivalence of the claimed ingredients, including the carrier vegetable oils. The prior art provides at least the application of antimicrobially effective composition of the instant components, to plant products, as does the instant disclosure and invention as claimed.

Applicant's arguments that the 5 was as preferred mix is not persuasive; very limited efficacy is shown, prior art demonstrations of efficacy shows the claimed compounds are well known antimicrobials, with one in the art able to determine with minimal testing, whether 1, 2, or more natural components of a composition would be effective.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Levy/LR
June 14, 2005



NEIL S. LEVY
PRIMARY EXAMINER